

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1001**

Introduced by Synowiecki, 7; Combs, 32; Jensen, 20; Dw. Pedersen,  
39; Price, 26

Read first time January 10, 2006

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Evidence Rules; to amend  
2 section 27-504, Reissue Revised Statutes of Nebraska;  
3 to provide for and change provisions relating to  
4 physician-patient privilege with respect to certain  
5 nurses as prescribed; to harmonize provisions; and to  
6 repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 27-504, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           27-504 (1) As used in this rule:

4           (a) A patient is a person who consults or is examined or  
5 interviewed by a physician for purposes of diagnosis or treatment  
6 of his or her physical, mental, or emotional condition;

7           (b) A physician is (i) a person authorized to practice  
8 medicine in any state or nation or who is reasonably believed by  
9 the patient so to be, ~~or~~ (ii) a person licensed as a psychologist  
10 under the laws of any state or nation who devotes all or a part of  
11 his or her time to the practice of psychology, or (iii) (A) until  
12 July 1, 2007, an advanced practice registered nurse licensed under  
13 the Advanced Practice Registered Nurse Act as such act existed  
14 before July 1, 2007, and (B) on and after July 1, 2007, a nurse  
15 practitioner certified under the Nurse Practitioner Act;

16           (c) A client is a person who consults or is interviewed  
17 by a professional counselor for professional counseling as defined  
18 in section 71-1,310;

19           (d) A professional counselor is a person certified as a  
20 professional counselor pursuant to sections 71-1,310, 71-1,324 to  
21 71-1,328, and 71-1,333; and

22           (e) A communication is confidential if not intended to be  
23 disclosed to third persons other than those present to further the  
24 interest of (i) the patient in the consultation, examination, or  
25 interview, persons reasonably necessary for the transmission of the

1 communication, or persons who are participating in the diagnosis  
2 and treatment under the direction of the physician, including  
3 members of the patient's family, or (ii) the client participating  
4 in professional counseling by a professional counselor.

5 (2)(a) A patient has a privilege to refuse to disclose  
6 and to prevent any other person from disclosing confidential  
7 communications made for the purposes of diagnosis or treatment of  
8 his or her physical, mental, or emotional condition among himself  
9 or herself, his or her physician, or persons who are participating  
10 in the diagnosis or treatment under the direction of the physician,  
11 including members of the patient's family.

12 (b) A client has a privilege to refuse to disclose  
13 and to prevent any other person from disclosing confidential  
14 communications made during counseling between himself or herself,  
15 his or her professional counselor, or persons who are participating  
16 in the counseling under the direction of the professional  
17 counselor, including members of the client's family.

18 (3) The privilege may be claimed by the patient or  
19 client, by his or her guardian or conservator, or by the personal  
20 representative of a deceased patient or client. The person who was  
21 the physician or professional counselor may claim the privilege but  
22 only on behalf of the patient or client. His or her authority so to  
23 do is presumed in the absence of evidence to the contrary.

24 (4)(a) There is no privilege under this rule for  
25 communications relevant to an issue in proceedings to hospitalize

1 the patient for physical, mental, or emotional illness if the  
2 physician, in the course of diagnosis or treatment, has determined  
3 that the patient is in need of hospitalization or if a professional  
4 counselor deems it necessary to refer a client to determine if  
5 there is need for hospitalization.

6 (b) If the judge orders an examination of the physical,  
7 mental, or emotional condition of the patient, communications made  
8 in the course thereof are not privileged under this rule with  
9 respect to the particular purpose for which the examination is  
10 ordered unless the judge orders otherwise.

11 (c) There is no privilege under this rule as to  
12 communications relevant to an issue of the physical, mental,  
13 or emotional condition of the patient in any proceeding in which  
14 he or she relies upon the condition as an element of his or her  
15 claim or defense or, after the patient's death, in any proceeding  
16 in which any party relies upon the condition as an element of his  
17 or her claim or defense.

18 (d) There is no privilege under this rule in any judicial  
19 proceedings under the Nebraska Juvenile Code regarding injuries  
20 to children, incompetents, or disabled persons or in any criminal  
21 prosecution involving injury to any such person or the willful  
22 failure to report any such injuries.

23 (e) There is no privilege under this rule in any judicial  
24 proceeding regarding unlawfully obtaining or attempting to obtain  
25 (i) a controlled substance, (ii) a written or oral prescription for

1 a controlled substance, or (iii) the administration of a controlled  
2 substance from a practitioner. For purposes of this subdivision,  
3 the definitions found in section 28-401 shall apply.

4       Sec. 2. The confidential relations and communications  
5 between a nurse described in subdivision (1)(b)(iii) of section  
6 27-504 and his or her clients and patients shall be on the same  
7 basis as those between physicians and their clients and patients as  
8 provided in such section.

9       In judicial proceedings, whether civil, criminal, or  
10 juvenile, in legislative and administrative proceedings, and in  
11 proceedings preliminary and ancillary thereto, a client or patient,  
12 or his or her legal guardian or personal representative, may  
13 refuse to disclose or may prevent the disclosure of confidential  
14 information, including information contained in administrative  
15 records, communicated to a nurse described in subdivision  
16 (1)(b)(iii) of section 27-504 or to a person reasonably believed  
17 by the client or patient to be a nurse described in such  
18 subdivision or the nurse's or person's agents, for the purpose of  
19 diagnosis, evaluation, or treatment of any physical disorder. In  
20 the absence of evidence to the contrary, the nurse described in  
21 such subdivision shall be presumed to be authorized to claim the  
22 privilege on the client's or patient's behalf.

23       This privilege may not be claimed by the client or  
24 patient, or on his or her behalf by authorized persons, in the  
25 following circumstances:

1           (1) When abuse or harmful neglect of children, the  
2 elderly, or disabled or incompetent individuals is known or  
3 reasonably suspected;

4           (2) When the validity of a will of a former client or  
5 patient of a nurse described in such subdivision is contested;

6           (3) When such information is necessary for the nurse  
7 described in such division to defend against a malpractice action  
8 brought by the client or patient;

9           (4) When the client or patient is examined pursuant to  
10 court order; or

11           (5) In the context of investigations and hearings brought  
12 by the client or patient and conducted by the board.

13           Sec. 3. Original section 27-504, Reissue Revised Statutes  
14 of Nebraska, is repealed.